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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,646	09/24/2003	Robert Lauter	25514-C USA	7882

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EXAMINER

PHILLIPS, CHARLES E

ART UNIT PAPER NUMBER

3751

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/671,646	Applicant(s) LAUTER ET AL.	
	Examiner Charles E. Phillips	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/24/03</u> | 6) <input type="checkbox"/> Other: ____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura taken with Calspa.

Nomura discloses a combination "spa" which comprises a tub (#1) having a bottom and a plurality of sidewalls (see figure 1) having an upper edge (see figure 1). Nomura discloses a surface (# 5) with an aperture (see figure 4). The water-tight housing (#2) of Nomura comprises an entertainment system (#6) that is positioned in alignment with the aperture (see figure 1). The entertainment system is movable between a first position beneath the surface and a second position above the surface (see paragraph [0010], [0011], [0013]. Further, the housing of Nomura comprises a mechanism (#25) to move the housing from the first and second positions and a control system (#4) for controlling the mechanism. Nomura further discloses a cover (#21) that is sealing member (see paragraph [0026]).

Nomura lacks a showing that a cover projects beyond the perimeter of the aperture.

Calspa shows a pop-up TV on the "Lounger SPA 47 jet spa" where the upper housing of the TV is shown to have a protruding peripheral flange which would serve as a seal on the tub upper surface.

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It would have been obvious to the ordinary artisan to provide the former with the flanged arrangement of the latter or for the latter to be provided with a seal as a waterproof system is taught by the former.

Re: claims 4 and 6, to provide for a second pop-up as seen in Calspa, as the speaker, would have been obvious as an adjunct to Nomura. Re: claim 7, see the upper surface of the speaker housing.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Inoue et al.

Inoue et al teach a waterproof sealing system employing a conventional "tongue and groove" arrangement at 80 and 50. To employ such an expedient for the pop-up systems of the combination would have been obvious to the ordinary artisan.

Any inquiry concerning this communication should be directed to Charles E. Phillips at telephone number (703) 308-1515.


Charles E. Phillips
Primary Examiner